IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9534 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HARNESHKUMAR SEVANTILAL SHAH

Versus

BANASKANTHA JILLA MADHYASTHA SAHAKRI BANK LIMITED

Appearance:

1. Special Civil Application No. 9534 of 2000

MR BD KARIA for Petitioner No. 1

MS MEGHA JANI for Respondent No. 1

MR DK ACHARYA for Respondent No. 2

NOTICE SERVED BY DS for Respondent No. 2,3-5

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 30/10/2002

ORAL JUDGEMENT

1) Rule. Mr. Acharya for respondents No. 2 to 5

waives notice and Ms. Megha Jani appearing for respondent No. 1 waives notice of rule. With the consent of the parties the matter is taken up for final hearing today.

2) The respondent No. 1 bank filed Lavad Case No. 538/1993 for the recovery of an amount of Rs. 2,49,250/with the interest at the rate of 12.5%. The said suit was filed against one Digvijay Industries and respondent No. 4 and 5. The said suit ultimately was allowed as per the judgement and award of the Ld. Nominee on 4-3-1996 and the defendants therein were ordered to pay the amount of Rs. 2,49,250/- with the interest at the rate of 12.5% from 1-10-1992 till the amount is realised and further the cost of Rs. 2,250/-. The respondents No. 2 to 5 preferred appeal being Appeal No. 298/1996 before the Gujarat State Co-operative Tribunal. The petitioners herein also preferred appeal being appeal No. 313/1996 before the Gujarat State Co-operative Tribunal. However, in the appeal of the petitioner, a statement was made that the petitioner had taken over the liability of the firm, viz. Digvijay Industries and therefore, the petitioners withdrew the said Appeal. The Ld. Tribunal heard the appeal No. 298/1996 preferred by respondent No. 2 to 5 and ultimately passed an order dated 28-4-2000, whereby the Tribunal partly allowed the Appeal and maintained the judgement and award of the Ld. Nominee dated 4-3-1996 against Harneskumar Sevantilal Shah, the petitioner herein, and so far as the other partners and the guarantors are concerned for the purpose of inter se liability, the suit is remanded back to the Ld. Nominee for deciding it. The said judgement and the award of the Tribunal dated 24-4-2000 is challenged in this petition by the petitioner herein.

3) The learned counsel Mr. Karia appearing for the petitioner submitted that in the operative portion of the order of the Tribunal, the finding recorded by the Tribunal that the summons was duly served upon the petitioner, is not true and correct and he submitted that in any event the finding recorded by the Tribunal is contrary to the record. The contention of Mr. Karia is that if the matter is remanded to the Nominee for deciding in respect to the inter se liability of other partners, there is no reason why the petitioner should be deprived of the said opportunity. He also submitted that even if it is accepted that the summons was served then also the decree passed by the Ld. Nominee was an ex-parte decree and therefore, the judicial discretion demanded that the opportunity should have been given by

the Tribunal while setting aside the said ex-parte decree to the petitioner also.

4) Mr. Karia submitted that the Ld. Tribunal has maintained the judgement and award against the partnership firm and has also maintained the award and judgement against the petitioner herein on the basis that the summons was duly served. However, when the Tribunal found that so far as inter se liabilities of the partners and the guarantors are concerned, the Nominee is directed to decide the said aspect, in all fairness the Tribunal ought to have given such opportunity to the petitioner also. It may be ultimately the rights of the partners inter se may be governed by the finding of the Nominee but the Tribunal ought not to have taken away the said opportunity from the petitioner by maintaining the order and judgement and award of against the petitioner also, merely on the ground that summons was duly served. Mr. Karia also submitted that with a view to show the bonafide of the petitioner, the petitioner is also ready to deposit the amount of Rs. 50,000/- with the respondent bank, if such opportunity is extended to the petitioner in the proceedings, which is ordered by the Tribunal to be decided by the Nominee.

5) Mr. Acharya for the respondents No. 2 to 5 has left the matter to the court. However, so far as Bank is concerned, Ms. Jani has supported the order of the Tribunal and she submitted that there is no error apparent on the face on record and therefore, the decree is rightly confirmed by the Tribunal so far as the petitioner herein is concerned.

6) Considering the above, I am of the view that when the Tribunal has maintained the decree against the partnership firm, the bank can proceed in accordance with law against the partnership firm. Normally in a decree against partnership firm all partners would be liable but the decree is an exparte and there is a dispute of inter se distribution of liability. Further in the present case, the Bank has not challenged the judgement of Tribunal so far as it relates to giving directions of inquiry. When the Tribunal has directed the Nominee to consider the matter so far as inter se rights and liabilities of the partners and the guarantors are concerned, no prejudice will be caused to either side if such opportunity is given to the petitioner also in the said inquiry. It may be stated that Mr. Acharya, Ld. Counsel appearing for respondents No. 2 to 5 has no objection if such opportunity is given to the petitioner herein. So far as the bank is concerned, the decree is

maintained against the firm and normally even otherwise also in exercise of the judicial discretion the Tribunal ought not to have deprived of the petitioner from participating in the said inquiry merely on the ground that summons was duly served. I am inclined to take such view because the petitioner could show his bonafide and has also shown his readiness to deposit the amount of Rs. 50,000/- with the respondent bank.

8) In view of the above discussion, the order dated 24-4-2000 passed by the Tribunal shall stand modified to the extent that the judgement and the award passed by the Nominee in Lavad Case No. 538/1993 shall continue to operate against the partnership firm and its property. So far as the inter se liability of the respondents No. 2 to 5 and the petitioner herein and the guarantor, Ld. Nominee shall decide the matter as directed by the Tribunal and the petitioner as well as the respondents No. 2 to 5 shall be entitled to put forward their case before the Nominee and the Nominee shall take the decision in accordance with law.

9) It is further clarified that before the petitioner is given such opportunity by the Nominee, the petitioner shall be entitled to deposit the amount of Rs. 50,000/- with the respondent No. 1 bank. Mr. Karia submits that his client may be granted 3 months time to deposit such amount. Considering the facts and circumstances of the case, the petitioner shall deposit the said amount with the respondent No. 1 bank within a period of 2 months from today. However, after such an amount is deposited, the Ld. Nominee shall allow the petitioner to participate in the said proceedings. It is also made clear that if the petitioner fails to deposit such amount, the Ld. Nominee shall not be entitled to give the opportunity to the petitioner and the bank shall also be at the liberty to execute the award against the petitioner also.

10) Petition is partly allowed. Rule made absolute accordingly. No order as to costs.

(JAYANT PATEL, J.)
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